



29 NOV 2007

SIM & MCBURNEY
330 UNIVERSITY AVENUE
6TH FLOOR
TORONTO ON M5G 1R7 CA CANADA

In re Application of
BEITELMAN et al.
Application No.: 10/524,873
PCT No.: PCT/CA03/01209
Int. Filing Date: 19 August 2003
Priority Date: 20 August 2002
Attorney's Docket No.: 2127-53 MIS/jb
For: COOLING ELECTROMAGNETIC STIRRERS

: DECISION ON
:
:
: RENEWED PETITION
:
:
: UNDER 37 CFR 1.181
:
:

This is in response to applicant's "Petition for Reconsideration of Decision on Petition" under 37 CFR 1.181 For Withdraw Holding of Abandonment based upon a failure to receive an Office Action filed in the United States Patent and Trademark Office (USPTO) on 13 August 2007 alleging that applicant did not receive the Notification of Missing Requirements mailed on 15 September 2005.

BACKGROUND

As previously noted in the decision mailed on 11 June 2007, a review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 15 September 2005. The notification indicated that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. The Notification set a time period of two months within which to respond to the Notification or until 15 November 2005 with extensions of time (up to 5 months) available under 37 CFR 1.136(a). No response to the Notification of Missing Requirements was received, and thus, the application was held to be **ABANDONED** as of midnight on 15 April 2006. No Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant. However, after a telephone discussion with the undersigned, applicant became aware of the abandoned status of the application and filed a petition to withdraw the holding of abandonment along with an executed declaration.

The 11 June 2007 decision dismissed the petition indicating that (1) Practitioner had not made a statement attesting that a search of the file jacket and docket records indicated that the Office action was not received and (2) Petitioner had not provided the record for all USPTO responses due on the due date for reply to the communication at issue. What is required is **the docket record for all replies due in the USPTO on 15 November 2005**. Petitioner initially had provided a mail log for correspondence received in the period 15 September 2005 through 15 October 2005.

On 13 August 2007, Petitioner filed a request for reconsideration along with a copy of the docket record "for all U.S. Patent Applications for which a due date was entered for the period of September 15, 2005 and October 15, 2005".

DISCUSSION

As previously stated in the decision mailed on 11 June 2007, in order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. As set forth in the Official Gazette at 1156 OG 53, the petition must include the following: (1) a statement from the practitioner stating that the Office action was not received by the practitioner; (2) the practitioner's statement must attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in practitioner's statement. See MPEP 711.03(c) I. A. No petition fee is required.

Practitioner has previously satisfied Item 1. Item 2 is now satisfied with the submission of Practitioner's statement attesting that a search of the file jacket and docket records indicated that the Office action was not received.

However, Item (3) is not yet satisfied. Petitioner previously submitted mail log records for the period September 15, 2005 to October 15, 2005¹. However, these mail log records were insufficient as they covered only the one month period from September 15, 2005 to October 15, 2005. Petitioner now submits the "docket records for all U.S. Patent Applications for which a due date was entered for the period of September 15, 2005 and October 15, 2005".

The Office generally requires, as the appropriate docket record for establishing nonreceipt of an Office communication, a record of all USPTO responses due on the due date for reply to the communication at issue. What is required is the docket record for all replies due in the USPTO on 15 November 2005. See MPEP 711.03(c)IA. Counsel does not indicate that the records submitted represent the docket record where the non-received office action would have been entered had it been received.

The appropriate docket record for establishing nonreceipt of an Office communication is the record where all USPTO responses due on the due date for reply to the communication at issue. In other words, the record required is the docket record where all replies due in the USPTO on **15 November 2005** are recorded. A copy of the mail log for the period 15 October 2005 through 15 November 2005 may also be helpful in determining whether the Notification mailed on 15 September 2005 was received.

Thus, applicant has not provided the proper showing necessary to withdraw the holding of abandonment. The petition may not be properly granted at this time.

CONCLUSION

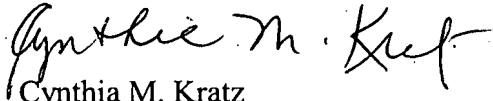
For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

¹ Applicant submitted a copy of "our records of received mails from the Canadian and US Patent Offices for a period of one month following the September 15, 2005 date, showing no indication of receipt of correspondence relating to this filing." The docket record provided is insufficient. It appears that applicant has only provided a copy of the mail record for the present application. In order to satisfy this item applicant must provide a copy of the firm's entire docket record for the time period in which the non-received Office action would have been entered. This is to assure that the Office action in question was not, in fact, received and mistakenly docketed to another application.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration

Telephone: (571) 272-3286
Facsimile: (571) 272-0459